

FORGERY:
DETECTION AND DEFENSE

A Guidebook
For the Legal Professional

BY
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and additions to Bibliography.
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I. PROLOGUE

A. DISCLAIMER

I am not an attorney and do not intend or attempt to offer legal advice or opinions. In the bibliography are articles which would be useful in beginning legal research on the law of forgery and use of documentary expert testimony. Since laws change and new decisions are rendered, the attorney should check the latest reports and publications.

B. ACKNOWLEDGMENTS

Several people gave assistance and kind encouragement while this was being researched and written. They have helped to make it as good as it is while in no way being responsible for any shortcomings.

Louis S. Franecke, Esq., pointed out how the practical value could be enhanced.

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My students contributed illustrative "forgeries." The ones who did not said they would create perfect ones and send them later. They have done neither. And that is a lesson to anyone tempted to commit forgery - even students of handwriting who know best what is involved in doing it can't!

John Bovenzi saved the guidebook from my original title and gave business advice.

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For publications they did not have, I had recourse to Hastings Law Library.

The highest acknowledgment goes to you the reader, without whom the whole project would have been futile.

I dedicate this guidebook to all the good people who deserved these acknowledgments.

C. OBJECTIVES

The objectives of this guide are:

1. to explain the main things that can indicate that a document might be a forgery, though not to serve as a means for actually determining forgery;

2. to give step-by-step procedures on what to do when faced with possible forgery;

3. to indicate what to consider when choosing a document examiner or handwriting expert;

4. to explain how to make use of the expert once you have chosen and how to question one during depositions and Court testimony;

5. to survey the legal periodical literature and distill its advice on these topics and to give reference to more detailed writings on particular points and on subjects not discussed here; this is done by reference numbers in parentheses, indicating an article either being quoted or serving as a source for the discussion or treating a topic in more detail;

6. to be as complete a guide as reasonably possible; so many points may not be applicable to a particular case, but to consider them all is not to miss any usable or necessary ones; the attorney must also consider what further points might be appropriate, consulting the expert on the matter or looking up a work listed in the bibliography;

7. to focus on civil cases and procedures; nevertheless, this guide can also prove useful in criminal practice.

II. INTRODUCTION

A. WHAT IS A DOCUMENT

A document can, in the broadest sense, be described as any meaningful symbols recorded in or on any material in any way whatever. For this guide, document will be taken in a restricted sense to cover the most common kind of document: written language on paper which serves to prove the truth of something or establish facts.

B. WHAT IS A FORGERY

BLACK'S LAW DICTIONARY says a forgery is "the false making or material altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability."

C. WHAT KINDS OF DOCUMENTS ARE FORGED

1. Absolutely any kind that can bring the forger an illegal benefit. Most common are those that would be economically advantageous: checks, charge slips, wills and codicils to wills, contracts. Of contracts, those in real estate are most likely the single biggest object of forgeries.

2. Other forgeries can be cover-ups for criminal acts or even legal acts which might be embarrassing to the doer. Forgeries to hide crimes could be: falsified business and professional records, especially financial records and reports to hide embezzlement or misappropriation of funds, altered inventory records to cover employee theft, doctoring of medical or other professional records to delete malpractice evidence, changing records and reports pursuant to governmental regulations when the person or firm faces possible fines or imprisonment.

A common forgery to cover legal but embarrassing acts is the registering under a false name at a hotel during an illicit tryst.

3. A word to the wise: every kind of document of any legal value is fair game in the forger's eyes and some of every kind have been forged at one time or another. Do not

let the seeming unlikelihood or improbability prevent you from considering the possibility. The clues listed later on will alert you to that possibility.

4. Forgery almost always comes in the company of other crimes, as indicated above. Perjury is absolutely necessary if the forger and/or accomplices pursue their objective in a legal action. Always consider criminal complaint against them once sufficient proof of forgery or underlying and accompanying crimes comes to hand. That is your most powerful weapon in the defense against forgery. Unfortunately victims often feel it is just too much trouble. A large department store merely accepted about three thousand dollars in forged charge slips as operating costs. You get to pay for it when you shop!

D. WHAT IS A DOCUMENT EXAMINER

A document examiner investigates the physical and literary nature of a document in every way possible to determine its authenticity in toto as well as in every aspect and part.(9) A document examiner is also called a questioned document examiner or expert, since the expertise is requested after someone questions a document's authenticity. However, the expertise can also be of great value in guarding against forgery, an aspect we will not consider here.

In doing the work needed, a document examiner borrows from many occupations and sciences.(44) A few examples follow.

The document examiner might have to determine the nature and chemical composition of paper and ink and even identify the manufacturer; determine the writing, folding, staples, holes, stains, and anything else the document may have suffered and discover which came first and maybe give a time frame for some events; state what storage conditions the document endured and how the writing may have been affected; identify what make and model typewriter or printer produced the document and possibly say which specific machine did the job; describe the nature of printed matter and sometimes track down the print shop that was employed; decipher charred, flooded, mutilated, erased or otherwise unreadable matter, provided destructive forces were not too destructive; and, if there is no known method of solving a document problem, try to invent one.

To do all this and much more at times, the document examiner borrows from chemistry, physics, optics, art of illumination, photography, language sciences and any other discipline that can supply tools or knowledge useful to the task. The document examiner also should know when and how to call for assistance from other kinds of experts for special problems.

Most important of all, the real expert will know the limits to all those possibilities and will not say what is or is not true in a given case till having made a complete study of it. What seems obvious on the face of things can often be disproved by the subtleties the expert seeks to uncover. After the data is fully and accurately observed and described, analytically and logically organized, conclusions soundly reasoned out, then one can make a convincing presentation of it. Ability to do that in a prudent manner is what makes the document expert an expert.

E. WHAT IS A HANDWRITING EXPERT

Basically a handwriting expert is one who can discover who did or did not write a particular handwriting. The handwriting expert is also called a forensic handwriting analyst.(11) Not all handwriting can be identified as to its author, as when there is far too little of it or there is nothing genuine to compare it to.(2) The expert should know and acknowledge what is and is not discoverable in a given situation and say what further material might be needed before the problem can be solved.

Forensic handwriting analysis, though considered a part of the general field of document examination, is in and of itself a scientific endeavor.(69) Historically it "fathered" the rest of the field. Royston J. Packard said; "Proficiency in the identification of handwriting is probably the most difficult skill to attain."(8) Yet some of us choose to specialize precisely in that difficult part of the work.

III. SUSPICIOUS DOCUMENTS

A. WHAT MAKES A DOCUMENT SUSPICIOUS

A suspicious document is one which some person has reasonable cause to doubt it is what it claims to be. A questioned document is one which someone maintains is not what it claims to be. For practical purposes the terms are interchangeable.

One would want to clear up any doubts about a document as soon as possible. "It is much more judicious to verify the genuineness of a document at the beginning of a case than after the case is ready for trial." (52) Ditto for verifying the non-genuineness at the same early date!

But to do either, one should know when one ought to be suspicious in the first place. The following are principal warning signs. These are clues to suspicion and are not to be taken as enough to prove the facts of the matter in and of themselves, except for two instances as noted. (13, 53, 72)

1. The document was found in the most amazingly peculiar way.

2. They cannot tell you quite by whom or how it has been kept till now.

3. It is remarkable how it was found by chance in the nick of time.

4. The original witnesses or authors are unknown or no longer available.

5. The document itself, especially a bequest, anticipates the arguments likely to be raised against it and answers them ahead of time. Along the same line, it seems to refer to certain facts just to show how genuine it is.

6. The paper, envelope or other material of which the document is made just seems too odd. If that kind of paper did not exist at the alleged date or the printed form was definitely produced at a later date, the forgery is conclusively proven.

7. There are corrections or erasures made. Signs of erasures are:

- a) smudges;
- b) abrasion of the paper;
- c) color of the paper varies in spots, which can indicate use of chemical erasures;
- d) paper has extra thin spots;
- e) writing feathers out in one area but not others;
- f) in spots the ink varies in color or other property;
- g) the back of the paper shows embossment by writing where no words or some unmatched words appear on the front;
- h) sighted obliquely against a light source, the glare or reflection is duller in a particular spot.

8. For all it was worth, the document was cavalierly treated.

9. Especially important is that the person allegedly the author of it had to act contrary to known life habits to make it that way.

10. The writing instrument is not what one would expect to be used on such a document. If it is too new an invention to be used on a document of that date, this fact in itself can conclusively prove forgery.

11. No one really knows who wrote it. It merely appears as Venus springing up out of the sea.

12. The edges show uneven or not squared cuts.

13. The arrangement and alignment of portions of the text are peculiar or pages seem out of order. Passages do not follow each other logically or typed portions do not line up.

14. The claimant or witness apparently needs to point out or keep explaining what shows the document to be genuine when there has yet been no questioning of it.

15. Statements in the document are at odds with what unquestioned documents say.

16. Stated facts or allusions to events are anachronistic or may have been unknown to the alleged author.

17. Watermarks on different pages do not match.

18. Lastly: "Circumstances in some of these cases are powerful witnesses."(7)

B. WHAT ARE CLUES TO A SUSPICIOUS HANDWRITING

We have to distinguish two questions the handwriting expert has to answer. First, is this written by the person alleged to have written it? Second, if not, who did write it? The first is easier to answer. The second is very difficult to answer and at times impossible.(29)

The complexity of the second question as well as its difficulty means I could not set simple guidelines. Mastering the forensic handwriting articles in the bibliography would give one a good start at the skill.(1) Thus the following discussions will be confined to those clues that cast suspicion on the authenticity of a writing and to basic principles which will assist you in using and examining a handwriting expert.

1. AUTHENTICATING HANDWRITING: THE BASIC PRINCIPLES

Prior to looking at the clues, we should look at a minimum of general principles to set the stage and then at the categories of handwriting features. These few general principles will also give an idea of the many empirically proven and generally accepted rules handwriting experts base their opinions on.(50)

a) Every person's genuine writing has certain consistencies, that is, the slant is always the same or all small a's look alike, and so forth.

b) Likewise, that writing has certain variations from those consistencies, as when some letters slant left while most slant right. These variations often have definite patterns, showing up at regular intervals or in given situations, as when the left slant only happens in capital letters. An important pattern in variations is that some will happen together, as when the capitals slanted to the left are very flourished while any slanted to the right are a lot simpler.

c) In comparing the suspicious writing with the genuine (which is then called the standard or exemplar) we search for the consistences and variations which are the same in both.

d) We then search for the ones which are different.

e) Next we ask if there is a reasonable explanation for the differences. For example, the base line may drop only because the person was extra tired that day, or the pen was almost out of ink so the writer used exceptionally heavy pressure.

f) If, after going through the process enough times to double and triple check, the answer to Item "e" is yes, the suspicious writing is genuine.

g) If not and the differences are substantial, the writing is by another person. If we do not have one of those two answers, we have to look for more comparison material or check to see if we missed something. It is a cautious science.

h) Some things are so often different from the genuine writing when we have a proven forgery, that they are clues to suspect forgery when appearing in a new situation. No single clue proves forgery, only a correct combination, for some of these clues are actually genuine features of some people's writing.

i) Although what we look for in being suspicious is any clue, what we look for in proof is a combination of features which, though individually insufficient, combine to make either a high degree of probability or a certainty. It is parallel to a physical description which applies to only one or to a very few people. For example, the following would pinpoint a suspect: female, white, natural red hair, green eyes, 5' 3", 125 lbs., mole right cheek, left ear only pierced, scar on right forearm, Southern accent, occupation: seamstress. Equally precise as identification is the same fictitious person's writing: mid-zone 4mm high with downstrokes 2.5mm apart on average, slant average 120 degrees, with capital letters at 85 degrees and lower zone endings vertical, pressure accent to right on horizontal strokes especially t-bars, upper zone 1 1/2 height of mid zone and lower zone 3 times as deep, base line dropping at ends of long words and plunging at end of sentences, no

i-dots but extra periods. Either description would fit only one in a few million.

j) Each person follows a master pattern in shaping letters. This master pattern may be based on the school model first learned, on imitation of another's writing or on individually developed style or on a combination of the three. There is also a master pattern for the other features of the writing, as a way of putting pressure on letters or slanting them or arranging the writing on the page.

k) We all write somewhat alike, or we would not recognize each other's words and letters.(32) At the same time we all have some differences based on individual patterns and on our own individual rhythm of movement or motor sequence. The more you write in your own natural, unhampered rhythm and use legible, simple, original forms, the harder it is to forge your writing.

l) When a person writes, as in signing name, no practice is needed, for one has the habit well in hand and moves right into it and right out of it without need to take stock along the way to see that it goes correctly.

m) Certain things result from the above point. For instance, curves are nicely rounded, no stops appear in the middle of words, starts and ends of strokes are tapered, letters are not retouched unless they are illegible. Naturally, lack of skill or circumstances like illness,(77) drunkenness(34) or mental disturbance(5) may make a writer unable to write with such ease as described here. Research has defined signs in the handwriting of such conditions.

2. CATEGORIES OF HANDWRITING FEATURES

There are eight main categories of writing features. Different writers use different categories, but I have found that the eight defined by Paul de Sainte Colombe(76) allow a comprehensive, logical and adaptable scheme for including both observations and principles of interpretation from any author I have read, whether the work was on forensic or character handwriting analysis. Also, terminology is not standard among writers, though there is a consensus on the major principles and no great diversity of terminology. So you will want to clarify the technical words the expert you deal with or examine makes use of.

The eight categories which follow are eight main aspects from which we can study the entire writing. Bear in mind that the handwriting expert is looking at the entire writing from each aspect and at the end synthesizes the findings into the general assessment or conclusions. These are the categories and what they cover.

a) SPEED. The expert can estimate the overall speed of the writing and how speed varies in particular portions. An estimate of the quality of the writer's motor sequence, or rhythmical progression of the movement, can be made. As a general rule, the less I think about how I write and the more about the message I am writing to you the faster and smoother I go. Contrariwise, the more I think about the way I am writing (as in careful formation of letters in a forgery) the slower and more hesitant is my writing.

b) ARRANGEMENT. This covers the overall lay-out on the page, including margins. It also covers spacing between lines and between words. Together with form, arrangement determines how legible the writing is. Margins are the most deliberate part of arrangement, particularly top and left margins. The spacing between words is the most unconscious part of arrangement.

c) FORM. This means the shape of the letters, numbers and diacritics and how they are or are not flourished. We look at how original the letter forms are and the way in which they are original. Peculiarities of individual letters are form, as are the i-dots and t-bars so beloved of popular dissertations on handwriting. Since form or shape is what impresses most people most of all, it is what is most used in the deceptions of forgery.

d) CONTINUITY. This covers the connecting strokes between letters and the distance between letters in a word. It is the most unconscious part of the writing and the least noticed and so the hardest to change.

e) SIZE. Four terms have to be defined. The mid zone is the area where small letters without upper or lower parts go, such as small a, c, s, r. The upper zone is where the loops of b, l, k etc. go. The lower zone is where the loops of g, y, z, etc. go. The imaginary line on which the mid zone letters sit is called the base line. In studying size, we first describe how high the mid zone letters are and then how wide they are as

compared to their height. We describe upper and lower zone letters in proportion to the mid zone size, as also the capitals. One can change the overall size of the writing a lot easier than one can change the proportions between the three zones or between the height and width of individual letters.

f) PRESSURE. There are two kinds of pressure to consider. The grip pressure is how tightly the fingers grab the pen. The other pressure is how hard the point of the pen is pushed against the paper. By the degree and pattern of the pen point pressure we can estimate the grip pressure and manner of holding the pen, as well as how genuine the writing is.

g) SLANT. Sometimes called slope, slant is the angle the letters and strokes form with the base line. There is more than one slant in most letters: the slant of individual strokes and the slant of the letter as a whole, determined by the axis of the letter. Like the earth, a letter is balanced on an imaginary line called its axis. Usually if someone changes the slant of writing deliberately, it will tend both to go back to the original slant and to have slants of individual letters and strokes keep the same relationship to each other. In other words, all slants in the writing tend to shift the same amount in the same direction. Slant is measured by degrees from the base line. I start at the extreme left as 0 degrees and go to the extreme right as 180 degrees. Vertical is 90 degrees. When an expert gives you degree of slant, ask for a description or drawing of a protractor being used, otherwise a 45 degree slant could be to the left or right of vertical.

h) BASE LINE. Most people look at the base line as an overall pattern. But there are many subtleties in each person's writing. Special letters may tend to rise or fall and particular parts of words will tend to rise or fall as will beginnings and ends of lines and sentences. It is not too difficult to imitate another's overall base line, but harder to keep imitating it for a long time. Even harder is noting another's minute peculiarities and imitating those.

These categories have been described as they apply to handwriting. However, with modification, they apply to mechanically produced writing. For example, under

arrangement, a typewriter may have a certain letter fall higher or lower than the others. For each category there has been indicated what points in the writing it covers and certain principles for identifying and authenticating writing apropos to it. Not only will the explanation in this list of categories as well in Number 1 above be helpful in finding clues to forgery, but you can also use them in questioning an expert working for you and in examining one under oath.

3. TOOLS

With that basic background information you are ready to check for clues to forgery. No special tools are needed for this preliminary examination; a basic hand held magnifier and good light will do fine. Do not worry about making a false judgement, since you are not making any judgements, only determining whether or not it might profit you to consult an expert who can make the judgement.

4. TYPES OF FORGERIES

There are generally held to be four kinds of handwriting forgery: Spurious forgery, Disguised writing, Imitated or Simulated forgery and Traced forgery. We will have remarks also about two special problems: Anonymous letters and Forgery above a genuine signature.

5. SPURIOUS FORGERY

This is one in which a person writes in the natural, genuine style but presents it as the writing of another person, whether real or fictitious. This is the easiest forgery to identify as to who wrote it. All one needs is enough proven exemplars - that is genuine writings - to compare it with. However, the clues to a spurious forgery are obviously nothing in the nature of the writing itself but only from the surrounding circumstances or the literary content of the writing.

6. DISGUISED WRITING

"Disguised writing is the willful modification of a person's natural writing for the purpose of concealing identity."(30) The following are clues to alert one.(12, 41)

a) Though letters are meant to be from different patterns they are shaped the same; and letters which ought to follow similar patterns are shaped differently.

- b) There are spots where the same letter is obviously shaped on different patterns.
- c) Letters are retouched, not because they are illegible, but only with the result they are given different shapes.
- d) The writing movement lacks flow, that is it seems to stop or some features change all of a sudden.
- e) The slant of the letters are backhand or extreme right, then they change to a moderate slant and quickly back again.
- f) Letters get bigger or smaller then change abruptly back again to their former size.
- g) Block capital letters or print-like letters are used in a mechanical way.
- h) Starts and ends of strokes are blunt; especially check if "periods" show where the pen rested as it started or stopped writing.
- i) The writing looks slow with hesitations wherever the writer apparently checked on how well the forgery was going.

7. IMITATED OR SIMULATED FORGERY

This is one written freehand to look like the writing of another person. This kind of forger has a problem that puts one between the devil and the deep blue sea. Will it be best to write in a natural movement, in which case it will look more like the forger's writing than the victim's? Or will it be best to write carefully so it will look as much like the victim's writing as possible, in which case it will obviously be unnatural writing and so suspect? In either case, the following clues will help alert you.

- a) It looks like natural writing but not like genuine writing you have on hand.
- b) It looks like the real thing except the movement is careful and slow, not flowing and natural.
- c) Loops and ovals are not nicely rounded.

d) Loops and ovals, especially decorative flourishes, look too small and restrained.

e) The same pressure is used in up and down strokes. In an easy, rhythmical style down strokes are heavier pressured than up strokes.

f) Starts and ends of strokes are blunt, especially when "periods" show in them.

g) Legible letters are retouched just to give them a different shape.

h) Stops will appear in the writing line as the forger pauses to check that the forgery is going correctly.

8. TRACED FORGERY

A traced forgery is just that, copying the genuine writing by some means of imposition. Most often genuine writing is put under the sheet of paper the forgery will go onto and strong light shines up through both papers. Most often it is a signature which is traced. There are other methods than the one described, but these clues will apply to all of them.

a) Guide lines of some kind are visible under or right next to the lines of writing. These guide lines might be pencil or carbon paper tracings covered with ink or maybe embossment with blunt, non-writing tool, the embossment later written over.

b) It looks just too much like a genuine signature. No two genuine signatures are exactly alike. In this clue be aware particularly of exact same letter size, form or spacing, same overall size of the signature or some unusual feature the alleged writer rarely uses.

c) Two or more suspicious signatures are just too much alike, meaning they may be traced from the same genuine one. Again, be alert for the things mentioned in Item "b" above.

d) Unvarying pressure or pressure that is in the wrong places.

e) Curves and ovals do not turn smoothly.

f) Sudden changes of direction in strokes, especially in curves or ovals or when the person tracing will have the writing hand in the way, such as a righthander doing diagonal down strokes at a 45 degree angle to the right.

g) When the hand gets in the way of seeing the writing being traced, it must be lifted and put back down, thus showing breaks and restarts.

h) Blunt starts and ends to strokes, especially with the "periods" mentioned earlier.

i) Retouching of legible letters so that the only purpose is to change the shape.

j) Compared to genuine signatures, it lacks fine details, these being lost in the opaqueness of the forged paper over the original.

9. ANONYMOUS LETTERS

An anonymous letter is usually in a disguised or imitated style, so the above clues will apply. However, I did want to mention special handling required by them to conserve as much evidence as possible.(2, 10) Since anonymous letters can be preliminary to criminal acts, or even cover-ups for them, prudence indicates that while one ought not to assume the worst, one ought to treat it as if it will become quite serious, until events prove otherwise.

It is best that an expert open anonymous letters, that being an investigative officer if it is a criminal investigation. If you must open an anonymous letter, handle it with tweezers or other such instrument so as not to smudge possible fingerprints or mar any other feature or evidence present. People receiving such letters should be advised to take the very first one to an expert and never destroy or toss out any in the series, so that in the end the maximum amount of evidence is available.

10. FORGERY ABOVE A GENUINE SIGNATURE

I mention this type in order to make an important point: just because a signature (or other feature of a document) is definitely genuine, that does not prove that everything else about it is genuine.(33, 40) The only way for a document examiner to prove positively that a document is not forged is

systematically to check it against every known indicator of forgery, using every known tool of investigation.

One must not ignore contrary clues that indicate that the document might be a forgery, simply because some other clue did not wash. If the forger had nothing in the product to make it definitely look good, forgery would be no problem at all.

I tell my students, when we come to detection of forgery in handwriting, that the forger is a con artist and an illusionist or magician. As an illusionist, he is a master at making a bad document look good while distracting attention from what will give the game away. As a con artist, he is seeking to make a sucker out of someone by selling nothing for something. The con artist works principally on the victim's gullibility and greed and tends to clear the area as soon as the con succeeds.

IV. WHAT TO DO WHEN SUSPICION IS AROUSED

"Who hesitates perishes." I cannot recall where that quote comes from, but delay in defending against suspected forgery may cause some perishing of the innocent. On the other hand, imprudent impulsiveness could also be self-defeating. A timely discovery of forgery will have the perpetrator "perish in the snare he laid for another." (Ecclesiasticus, 27:29)

The first steps are to protect the documentary evidence, gather all the circumstantial evidence, interview the claimants and witnesses about the document and obtain expert assistance.

A. PROTECTING THE DOCUMENT(20)

1. A photograph of the document (high resolution glossy) will serve to prove its condition as it originally came to hand in case anything damaging should happen to it later. This is best done by a photographer specializing in the work or a document examiner who does photographic work.

2. The document should be kept in a protective envelope or cover. The best is a clear plastic cover which lets it be stored unfolded and be read without handling the surface of the paper.

3. Never use any kind of pointer that might mar the document or damage or erase the writing in the slightest. Often the very slightest of clues can be the most important and accidentally destroying or adding such could make it impossible for the document examiner to discover the truth later.

4. Store the document away from environmental factors, particularly heat, strong light and moisture.

5. Let only a qualified expert do the examination and never allow destructive testing, that is any testing which alters the document in any way, done without full knowledge of its nature and its effects on the document. Obtain proper consent of the Court, other attorneys or interested parties as appropriate. In destructive testing, which should be the very last resort, clear photographic evidence must be made of the state of it both before and after so that the effects of

the testing are not later confused with evidence of falsity or genuineness.

6. Keep all documents and information in an organized and usable manner.(49) This should follow the standard system you use in organizing documents in any other case you handle.

B. GATHERING ALL THE CIRCUMSTANTIAL EVIDENCE

These are the central questions needing answers:

1. What are the scenarios for where and how this document was produced? Which are most likely?
2. Whose interests are benefited by this document?
3. Whose interests are harmed by it?
4. Who are the witnesses about the origins, storage and finding of the documents on either side of the question? Are any disinterested witnesses available?
5. Of all the people involved, do any give evidence of deserving some background checking? Maybe someone appears to be more or less than self represented.
6. What business or other associates of the alleged author of the document might be available for interview?
7. Who is the attorney for other interested parties?
8. What information might be properly requested of that attorney?
9. What discovery process can compel information not forthcoming?(16)
10. Who are the experts investigating or planning to testify for the other side?

C. INTERVIEWING CLAIMANTS AND WITNESSES

Interview or depose all claimants and witnesses as well as other sources of information as soon as possible. Those bringing forth a suspicious document may talk more freely at the very beginning, even volunteering unsolicited

information. Later, when they see both the document and their stories are being checked out, they might become more circumspect, less cooperative and even change their stories, claiming they never said such a thing. This checklist, along with your usual practice in investigating a case, will help in interviewing people regarding the document's authenticity.

1. All interviews should be recorded in some way and, if possible, reduced to writing so the witness can sign it. Another person present at the interview also keeps things from being easily denied later. Remember, forgery is a deception and one who practices one deception will as easily practice another.

2. Never express an opinion about what is being related and refrain from criticizing or attacking. Make it easy for them to tell all they freely can and will, for the con artist gains confidence as resistance seems to disappear in the listener.

3. Interview witnesses, clients and others separately, for if there is collusion (which there usually is in cases of will or contract forgeries for example) there will be conflicting stories sooner or later. They cannot possibly foresee all the legal ramifications of their act and rehearse all possible queries.

4. Ask for details - specific details - as to who wrote what part of the document and when and where it was written.

5. Who were the witnesses present? Others present? How did they come to be used as witnesses? What accounts for their presence at that time?

6. What were the circumstances of the writing: sitting, standing, lying in bed, paper on table or against wall or on book while standing, etc? Time of day, which room, which part of the room, and so forth.

7. What motivated the writer? Dying, settling an argument, fulfilling a negotiation, repaying a favor, or other?

8. What was the condition of the writer: old, ill, drunk, hail and hearty, emotionally up-set or calm, etc?

9. What was the condition of the paper before and after the writing: flat, folded, rolled, in an envelope, from a box, etc? Where did it come from?

10. What kind of writing instrument was used: ink pen, ballpoint, pencil, other? Make, color of instrument? Whom did it belong to? More than one writing instrument used?

11. Who took charge of the document after it was written? Who has earlier copies of it or, even better, a copy of a draft.

12. Who kept it all this time and where? Who had access to it from that time till now?

13. Are there any other related documents such as letters that mention it, older documents this one replaces or modifies, newer ones that modify or replace this one, receipts for its custody, etc?

14. The more detailed the answers are the more data the document examiner will have to work on. If the detailed answers are true, they will assist the investigation. If they are false, then the more detailed and numerous the falsehoods are the easier it will be to find contradictory evidence. The expert will have a better idea where to start, how to proceed and when the investigation has succeeded.

15. Be careful about those who are not handwriting experts but who are sure the writing is really that person's. Experiments have shown that non-experts, even if they see a person's writing regularly, are not too good at identifying it.(17) Indeed, there are some who cannot identify their own writing in controlled tests.(24)

D. OBTAINING A DOCUMENT EXAMINER AND HANDWRITING EXPERT

In this part and in those considering expert testimony, it is assumed laws and procedures generally applicable to all expert witnesses are applied in your use of the document examiner and handwriting expert.(52) Therefore remarks will concentrate specifically on use of this expertise.

1. First consider: do you want the expert to give testimony or do you want a non-testifying, consulting expert? You would protect the consulting expert from the discovery process, so that you have a privileged source of professional

advice.(6) As for the testifying expert, take it for granted that whatever passes between the two of you or between the expert and any other person in the case will be discovered by opposing counsel.(48)

Make very clear to the document examiner which of the two roles you want filled. Later the two kinds of experts and how to use each will be discussed in more detail.

2. It is imperative that the document examiner and handwriting expert be contacted as soon as you realize the need or see a potential benefit.

a) Ask your client to authorize you to retain whatever expert help you need. And be sure that the one you choose is available at the time trial is scheduled.

b) Delay might see the documentary evidence suffer damage. There are clues which fade from the paper or writing with time. Delay may also mean you are too late for the expert you prefer.

c) The sooner you know the truth of the genuineness or falsity of the document the sooner you can make the decisions and take the actions which are in your client's best interest.

d) Clarify with the expert the fee schedule and method and time of payment.

e) Scrutinize publications and prior testimony if available. Has the person taken inconsistent or erroneous positions? Is the style of testimony and report writing unfit for your style or this case?

f) Knowing all publications, ads, and so forth the expert has produced not only helps you decide if this is the best one for your needs but can also alert you to possible grounds of attack by opposing counsel.

3. The following are the more general and preliminary things to tell and not tell the expert.

a) Do not tell the expert the conclusion you want. Assuming you give into the temptation to act the role of document examiner or handwriting expert, if the expert does not resist that presumption, seriously consider another more independent minded expert. The expert's

investigation must be totally independent, otherwise even a perfectly valid and accurate report could become suspect.

b) Pose only an objective, specific but open-ended question. If in the report the expert can say that was the case, any supportive evidence will be strengthened. The expert should have no doubt about what specifically is the problem is to be solved.

c) Do share with the expert all you uncovered relative to the genesis and history of the document. That will help determine the most fruitful approach to take.

d) Be precise about what you want in the final report. Do you want a verbal report before any written report is done? Since the expert's files may be fully discoverable, are there specific guidelines for making records of the work? What do you wish included in a written report?

e) If the expert is to testify, communicate only what you are willing to have discovered by the other side. As for the non-testifying, consulting expert, you and your staff should be the only contact the expert has with anyone in the case.

V. FINDING A QUALIFIED EXPERT

A. FINDING INFORMATION ON EXPERTS

1. The following are some sources listing document examiners and handwriting experts:

- a) Ads and listings appear in legal publications such as local legal newspapers and the MARTINDALE-HUBBELL DIRECTORY.
- b) The telephone yellow pages list them under HANDWRITING ANALYSTS and HANDWRITING EXPERTS.
- c) There are directories of persons in the field such as rosters of membership for associations and the INTERNATIONAL DIRECTORY OF HANDWRITING ANALYSTS. (78)
- d) A colleague may have used one or more experts and can give a referral.
- e) If you read an article in legal periodicals or books on the subject and are impressed, you can contact the author.
- f) You can create your own source of names. Ask all whose names you can find in any of the above lists for a curriculum vitae and resume to keep on file against the day the need arises. Then you can pick out the one whose qualifications seem closest to what you need.

2. The experts themselves are sources of information. Not only should the following be helpful in choosing the one you want, but, having chosen, you would be well advised to obtain it all. The section on testifying will indicate how it might turn out to be grist for the mill. The more complete your file on your expert, the more complete can be the preparation and presentation of the expert testimony. Ask the expert for:

- a) an up-dated curriculum vitae and resume;
- b) brochures, ads, flyers the expert uses for promotion;
- c) list of all publications, and, if possible, copies of those with any bearing on the problem in this case;

- d) references for previous expert services of this kind;
- e) other things that come to mind as of value.

3. In a very complex case or one involving great amounts of money or property or serious legal consequences, the retaining of two or more experts might well be considered. This can guard against the first expert becoming unavailable due to some unforeseen cause, as illness. Additional expert opinions might add weight to your case. You might wish to divide the work up among several experts according to their individual strong points.

4. Many attorneys offer a no-fee initial consultation before requiring a retainer. I personally do something of the sort and let a prospective client interview me prior to deciding on engaging my services. Ask any expert new to you to extend that courtesy.

B. WHAT ARE THE QUALIFICATIONS OF A DOCUMENT EXAMINER

1. "To testify as an expert, a witness needs to be qualified only 'by knowledge, skill, experience, training, or education.' An expert need not even have complete knowledge of his field of expertise or be certain of his opinion." (47) However, you will want an expert with excellent, relevant qualifications, not the bare minimum to qualify in Court.

2. The expert must be knowledgeable and expert in every aspect of the problem. For instance, if it is a matter of determining the chemical nature of inks, the expert must know the relevant chemistry, be able to do such tests as paper chromatography and so forth. But to insist on expertise in Chinese writing when the document is by an American in English is unreasonable.

3. The expert must adhere to the accepted ethics of the profession, which are set forth in Section V, Part A.

4. Though the document examiner will focus on the internal evidence of the document itself, there should be an ability to advise on possible external evidence to pursue. This includes discerning what other illegal activity might be underlying or stemming from the forgery and what circumstantial evidence the document presupposes or infers.

5. The expert must be able to state precisely the facts uncovered, describe the scientific methods used to uncover them, state the importance of the data in non-technical language, reason to conclusions coherently, and express all of it to judge and jury convincingly.(54)

6. There must be demonstrated valid training for the work. This can be from academic course work (the least likely), apprenticeship with a recognized expert, private courses from several experts or personal study, which is paramount, since formal training is not well established and it ought to go on for a lifetime in any case.(37)

7. The work, though not necessarily precisely as a witness, should be the paramount activity and a permanent profession. It is interesting to note that many document examiners come from quite varied backgrounds and occupations, which helps to enrich the profession.

8. Another essential qualification is possessing the necessary tools and equipment to do the job.

9. A professional library supplies resource materials. At the present time my own personal library exceeds 300 items.

10. Memberships in professional organizations are important, though I think a mere listing of any organization in which one does not participate beyond paying dues is a facade.

11. Professional recognition through awards or publications can indicate a qualified individual.

12. I personally feel one ought to doubt the qualifications of an individual who seeks to prove it by disparaging others, whether individually or collectively. Quality speaks on its own.

13. Ask to see some of the person's non-confidential work: reports, depositions, court transcripts. A document examiner's ultimate qualification is the discovery and presentation of the truth when faced with a problem.

C. HANDWRITING EXPERT'S SPECIAL QUALIFICATIONS

1. Training in the objective and systematic observation of handwriting does not entail merely a course or series of courses but personal application in years of practice and study.

2. No single author or group of authors offer the full range of the science of writing identification, so one should be familiar with a wide variety of authors of many schools of thought. I have noticed that writers, who are parochial minded and think their own school of thought is the only one which has it right, have obvious gaps in their discussion which could be filled by a more catholic mentality. They sometimes even fail to understand the writing as the effect and sign of a living, organic, dynamic, expressive movement. To be closed-minded to the truth simply because of prejudice against the source or channel disqualifies one as being truly scientific.

3. Psychological principles underlying behavioral patterns and expressive gestures should be understood, for writing has been proven to be both.(36) Some understanding of the elements of human motor sequence is needed, since writing is one of the most delicate effects of that motor sequence.

4. The handwriting expert must know what elements of writing are most subject to deliberate change and which are not--at least without great and prolonged effort. Some were indicated in Section II, Part B, Numbers 1 and 2.

5. Knowledge of the science can be shown by books, articles, reports and testimony by the expert.

6. The expert must keep clearly in mind the difference between forensic handwriting analysis, which we are considering here, and character handwriting analysis.(45) Crossing the line between the two might kill off an otherwise effective report and testimony. They both start from the same first steps: a careful evaluation of the writing to be analyzed to determine the limitations one is working under and then a thorough and accurate observation of the physical characteristics in a systematic manner. Any kind of analyst who does not proceed in that fashion is unqualified and the conclusions suspect.

7. There is much petulant arguing about whether being a character handwriting analyst or graphologist ought or ought not disqualify one from being a forensic handwriting analyst.(1) The problem with the argument is that it is like saying apples are red since Rome Beauties are, while the opponent says they must be green since Granny Smiths are. The following quote gives an objective view of the question:

"There exists basically two groups of Graphologists.

"First there are those workers who have undertaken long and serious training under the guidance of accepted experts in the field, and who have devoted much effort to their studies. Many of these Graphologists have been professional persons of no mean standing in other disciplines--such as Medicine, Psychology, Law, Philosophy, etc....

"Some of the criticism levelled at Graphologists in general can be said to be due to the activities of those who fall into our second group. These can but be described as charlatans--they will read a 'character' from handwriting in a few moments, expressing their opinions in the most general terms."(51)

Then there is the undeniable fact that it was a graphologist, Dr. Robert Saudek, who researched and presented the greatest English language work on handwriting identification, EXPERIMENTS WITH HANDWRITING. Also many who are closed-minded to character handwriting analysis will mention how handwriting will reflect such character traits as habit, skill, subconscious impulse, health, and so on.(42)

D. ETHICS FOR THE DOCUMENT EXAMINER AND HANDWRITING EXPERT

The code of ethics presented here combines points made by many authors in many articles.(4) This code is therefore the most comprehensive of all discussions of ethics I have come across.

1. In any handwriting analysis, whether forensic or psychological, there are four requirements:

- a) The writing sample must be obtained legitimately.
- b) There must be a legitimate right to know.
- c) There should be assurance of confidentiality.

d) The information obtained ought to be used legally and ethically.

2. The expert must approach all problems in a totally objective, open-minded way. It must never be assumed the retaining party is in the right, that a writing is or is not genuine. In other words, the questions posed should be starting points of inquiry and not requirements for conclusions. The investigation should be allowed to lead to new essential questions if evidence and logic so indicate.

3. "An expert is not to act as an advocate for one party's cause but must be impartial and render an opinion based on scientific research and examination."(9)

4. So that there be no personal interest in the outcome, the document examiner must never work on a contingent fee basis.

5. "The judicious specialist does not give an offhand or preliminary opinion before making his report."(52) Nor should one give unfounded assurances of what can or cannot be done. However, the specialist could give an initial indication of the possibilities and advise on the most prudent and effective way to proceed from a technical point of view. This would include saying what further materials might be needed and tests done to discover the truth, with an estimate of what the time and costs might be with a given scenario. One can never guarantee the time a problem will require, though a client's finances might dictate a limit on the extent of the investigation.

6. The expert must not pretend to any qualification not possessed.

7. Once consulted or retained by one party to a dispute, the expert is no longer available to assist the opposing party, except by the express consent of the interested parties.

8. The expert must do nothing to interfere with the legal management of the case. So, for example, the expert should be retained directly by counsel and by the client only with the knowledge and consent of counsel. As a consulting expert, there must be no contact with anyone in the case other than the retaining attorney or the designated staff members.

9. The expert should make clear what the commission is precisely.

10. All contact with the attorney's client, opposing counsel or any others in the case should be by proper arrangement through the retaining attorney, unless there be explicit understanding otherwise.

11. All consultation and reports are confidential and the expert may disclose the work and findings only through the attorney or as legally obliged to as by deposition or Court testimony.

12. The work should be done in a timely and thorough manner, according to the agreed instructions. The same dedication should be given to all clients equally.

13. When a commission cannot be satisfied, the expert is obliged to explain why promptly, indicating what new material may be needed and referring the matter to another expert if appropriate.

14. Promotions and solicitations should maintain the highest standards of truth in advertising and professional dignity.

15. The expert has an obligation to avoid bringing discredit on the profession and to comport oneself in an appropriate manner while performing professional duties.

16. The expert should keep abreast of publications and developments in the profession and study to increase knowledge and train self to gain greater skill.

17. The expert must value the client's interest above one's own personal consideration as far as reasonable. This especially means leaving one's ego at home whenever testifying and promptly correcting any errors in one's work once they are discovered.

18. The fee structure and payment schedule should be spelled out clearly in advance. Just as attorneys do, the expert might consider reduced fee and pro bono work for the economically disadvantaged.

VI. SERVICES THE EXPERT CAN RENDER

A general description of these services was given in Section I. This will cover more specific things from which you can choose ones you desire. They are grouped as follows:

1. Those of the consulting, non-testifying expert, which are treated in Part A.(63)

2. Those of the testifying expert from the time of retention to the time of testifying. They will be found in Part B.(56)

3. Those of the testifying expert during the time of testimony and Court proceedings. They are covered in Part C.

4. Finally, those of the testifying expert after Court proceedings conclude. They will be covered in Part D.

5. Though logically a part of consulting or pre-trial services, requirements for gathering exemplars is so singularly important that they are treated separately in Part E. This is done also since you might have to obtain exemplars without the luxury of an expert's advice and assistance.

A. CONSULTING, NON-TESTIFYING EXPERT

Any services the testifying expert renders which can be separated from the role of witness can be performed by the consultant. The following could definitely be separated:

1. The expert can advise on things for you to read in order to grasp the basics or technicalities of document examination and handwriting identification. You should be able to get answers to any perplexities you have on the subject.

2. The expert could give a diagnosis of the suspected forgery, estimating the likelihood and the work needed to be sure. You might prefer a complete report from a consultant before having one from a witness.

3. You can obtain advice on how to handle experts on either side of the issue.

4. Ask if the consultant can contribute to formulating discovery requests since the expert could have a good idea of what other documents and evidence the forgery points to.

5. In the same vein, there might be suggestions for actions in general.

6. The expert knows sources of exemplars and techniques for obtaining requested exemplars. The expert might be the best person to obtain collected exemplars. See Part E for definitions of these terms.

7. If there is one forgery around, there might well be more. Like Al Capp's smooos, deceptions proliferate themselves easily. The expert could look at all documents likely to be altered or falsely produced.

8. The expert, from past experience, could indicate what actions and defenses a forgery requires of those putting it forward. There have been studies on the psychology of forgers and so one might anticipate the response when the deception starts to unravel.

9. The expert can alert you to other areas of possible irregularities and illegalities involved.

10. Throughout the preparations and proceedings, you can bring new developments, documents and reports for both your side and the other to the attention of your consultant for evaluation and updated advice. All along the way you will want both to respond to and to anticipate attacks and defenses from the opposition. Ongoing contact with the expert consultant can assist in that objective.

B. TESTIFYING EXPERT'S SERVICES PRIOR TO TESTIMONY

1. If you wish, the testifying expert can also serve as a consulting expert, which would make those things discoverable.

2. The principal activity is investigating the suspicious document.(8) The investigation is eight-fold:

a) the paper: nature and quality, manufacturer, watermarks, cut or perforated, etc;

b) writing medium: whether ink pen or ballpoint or pencil or other, effects of writing instrument, how the paper takes the writing medium, etc;

c) the writing itself: the eight categories as given in Section II, Part B, Number 2;

d) how the document was assembled: taped, stapled, bound, envelope, etc;

e) the environmental effects on the document: light, moisture, heat, chemicals, storage method, handling and usage, folded, rolled, etc;

f) larger context to which the document belongs: part of certain files or records, one in a series as numbered checks, personal papers, no relation to other documents, government or private forms for special purposes as W-4 or insurance claims, etc.

3. The investigation usually results in a written report.(14) As mentioned earlier, you should be specific if you want the written report to cover or omit certain questions, presented in a particular manner or meet other specifications. The form of report I have developed is as follows:

a) I divide it into numbered sections with identified paragraphs under each section for easy reference. The first section describes the contact made with me and by whom, when and how.

b) Next section defines the problem posed.

c) I then identify each writing sample submitted for examination, the questioned documents being indicated as lettered exhibits, the others which are exemplars being designated as numbered exhibits. It is clearly indicated the basis for each exemplar being represented as genuine.

d) A summary of conclusions drawn is given next.

e) The following section is the detailed observations of the questioned document, usually arranged by the eight categories.

f) Then comes detailed observations of the exemplars and how they compare with or differ from the questioned document. Procedurally, one examines each writing independently and then compares the results so as not to be tempted to hasty conclusions.

g) The next section expands on particular comparisons or differences which are of special import or require illustrative charts which are appended to the report.

h) Throughout the report the principles upon which interpretations are based and the reasoning from data to conclusions in applying those principles are explained as needed. I note the evidence which apparently supports the opposite view and explain how it is not cogent. This serving as the devil's advocate will help disarm an opposing opinion and demonstrate the objectivity of the report.

i) If appropriate, suggestion for further investigation or action is included.

j) Copies of all documents studied are appended.

k) The report's literary style should be non-technical and definitely avoid any in-group jargon which some members of every discipline adopt in lieu of excellence and so confuse a convincing communication with a snow job.

l) Not every report contains all of the above points, but only those which are appropriate to the situation and the client's commission.

4. A pre-trial conference with the expert is essential if the expert testimony is to be presented in the most effective way.(70)

a) When defending against a forgery, the attorney necessarily faces a certain kind of witness. "Actual forgery is always accompanied by deliberate and sometimes highly skillful perjury." (23) The document examiner might be able to describe the testimony needed to support a particular forgery.

b) The attorney should familiarize the expert witness with the overall case and the part the expert is to play in it. It is assumed that they are on the right side of

the issue, for the ethical document examiner would have long since withdrawn services from the defense of a false document. Likewise the ethical lawyer would have dropped or amended claims based on false evidence, when it was satisfactorily proven to be so.

c) The expert witness has to make clear what can and cannot be testified to and the manner best to bring it out effectively. "(A) condition which may greatly affect the convincingness of document expert testimony is the degree of cooperation between the witness and the lawyer. The lawyer should know exactly what the witness is going to say and the way he is going to say it; it is also important to know what he will not say."(18)

d) If the jury will have to determine facts by observation of writing samples, one must be aware of form blindness and prepare to overcome it.(19) The expert should know how to assist in this and provide references in the literature. Form blindness is inability to distinguish to some degree the differences between shapes of letters and strokes. This may be due to organic dysfunction or to lack of development of the skills of observation.(38) The problem can extend to inability to note variations in shading within the ink line, arrangement, size relationships and proportions and in any other writing feature. It is therefore necessary that the expert describe for you the observations the jury will have to make. Simple tests might be prepared, which you could then ask the Court to approve for use during the selection process. If that is not permitted, you could carefully monitor jury comprehension while the expert testifies.

e) All reports and exhibits should be reviewed to be certain of usefulness from the expert's viewpoint and admissibility from yours. Can some be eliminated or better obtained in the time available? Exemplars should be reviewed in the same way.

f) Get assurance that the expert's techniques are standard practice in the profession or, if not, you are supplied with the authoritative opinions needed to back them up.(15)

C. SERVICES DURING TESTIMONY AND PROCEEDINGS

Actual testimony by the expert witness will be considered in the next section.

1. Once you acquire them, the expert can review reports and testimony of opposing expert and evaluate strong and weak points.

2. When you decide to depose the opposing expert, yours can assist in preparing the line of questioning.

3. During direct testimony of the opposing expert, yours can take notes on points of vulnerability for cross-examination. However, some authors are emphatic that the testifying document expert should not sit at table with counsel nor be seen in Court as actively engaged in an adversary role. It would undercut the objectivity of the examiner's position and violate the spirit of the ethical rule about not being an advocate for either party.

4. Have your expert go over the professional writings of opposing experts, in case they contain anything which contradicts statements in their reports or depositions. There may also be indications of lack of understanding or misunderstanding of a point essential to the question before the Court.

D. POST-TRIAL SERVICES

After the trial is over, a post mortem conference with the expert can be of great value.

1. If further legal action is planned, as in filing a criminal complaint against forger or perjurer, you may need another compilation of all documentary evidence developed.

2. If an appeal is to be made, the expert can assist with the relevant portion of the brief.

3. Since one who has tried to dupe you or your client with a forgery may try again, have the expert check out any suspicious documents sent to you or turned up during post-trial settlement.

4. If you intend employing the witness' services again, reviewing the entire work together would make for a more effective working relationship.

E. GATHERING EXEMPLARS

Guidelines for exemplars focus on handwriting. (22, 25, 35) The same rules apply to typewriting exemplars and other types of exemplars, mutatis mutandis.

1. An important need is for exemplars for comparison. Exemplars, also called standards, are genuine samples of writing with which to compare the questioned writing. The expert must assist the attorney by explaining precisely what is needed and the proven methods of obtaining it. If exemplars are inadequate in quantity, quality or manner of collecting, it is harder to reach reliable conclusions.

2. All exemplars must be admissible in Court according to current rules of evidence, otherwise the report based on them may be vitiated as evidence.

3. If a court order is needed to compel a party to give samples of writing, have the order specify details of the procedure and writing features to be included, such as samples in a backhand as well as a forehand slant.

4. Collected exemplars are those which were not written in connection with the case, though all writing written in connection with the case should be considered as possible exemplars. Collected exemplars ideally should be:

- a) of sufficient amount; the expert should know how much is enough, though generally the more the better;
- b) of the same kind of writing as the questioned document, that is, similar kind of form or correspondence, etc, same kind of paper and instrument if possible, etc;
- c) be as near in date to the questioned document as possible;
- d) be written under the same kind of circumstances, or at least similar;

e) be found in any legitimate source, such as public records, private papers subject to subpoena and so forth.(53)

5. Requested exemplars are those a person is asked or compelled to write for purposes of comparison to the questioned document. Exemplars expressly written as such and volunteered by the suspect are considered self-serving and so suspect in themselves. The attorney should consult with the expert to be sure that requested exemplars are such as to meet the requirements of the work.(42) Guidelines are:

a) They should be written at dictation, never copied from text.

b) The text should be designed so it has the same letters, letter combinations, words and word combinations as the questioned writing. These should be repeated throughout the text.

c) As each dictation is finished, it should be marked for identification and removed before the next is given.

d) It may be advisable to have several texts of some length which are rotated and given at a little faster speed each time.

e) The materials for writing, pen, paper and so forth, should match those used in the questioned writing.

f) The conditions under which the original was written should be recreated as much as practical.

g) If you want a signature, be sure to ask: "Please sign your name," as opposed to: "Please write your name." Many people have distinct styles for writing and for signing their names.

h) The expert must advise if the problem to be solved needs some special guidelines.(43)

VII. TESTIMONY OF THE DOCUMENT EXPERT

A. THE TESTIMONY IN GENERAL

The laws, rules, procedures and practices applicable to all expert witnesses are applicable to the testifying document examiner and handwriting expert.(61) Therefore, the treatment will focus on things specific to this kind of expertise and to indicating lines of questioning you could follow.(55, 73)

B. DEPOSING OPPONENT'S EXPERT(62, 57)

1. It is assumed that discovery of experts is completed, all their reports obtained and your expert has studied them; you have mastered the technical aspects and decided to depose.

2. Subpoena from the opposing expert all the material that was suggested to be collected from your own expert and the entire file with all papers related to the case in any way.(16)

3. Query about qualifications can follow those listed in Section IV, Parts B and C. Also check the ethics of the expert, using Section IV, Part D as a guideline.

4. Query about the work the expert has done can follow the lists of services given in Section V according as to how they apply. One would not ask questions about handwriting identification if it is only a matter of typewritten passages.

5. Inquiry into the actual investigation and the report can be based on the clues and principles set forth in Section II.

6. I have arranged the text so that it can be used as a basis for systematic examination of a witness. This will go for Court examination as well as depositions.

7. You can also look over Parts D, E, G and H below for other ideas.

C. WHEN YOUR EXPERT IS DEPOSED

1. Most definitely be there.

2. Prior to the deposition it may be advisable to review proper decorum and performance. For expert witnesses who read this the following points are given:

a) Every question should be answered precisely, fully and honestly, while not going beyond the question posed.

b) Never volunteer unsolicited information nor try to assist the examining attorney in framing the questions. Along that line, bring with you only papers explicitly subpoenaed or requested by deposing attorney.

c) However, do explain when a question cannot be answered as posed or within the field of expertise.

d) Ask that unclear or ambiguous questions be clarified.

e) Accept only those assumptions and hypotheses which are true or could possibly be true, explaining why you consider any impossible or unreasonable. Note further conditions necessary to be added to make the hypothesis valid.

f) Mistakes should be candidly acknowledged and corrected on the spot.

g) Equivocations such as "I think" or "I guess" should be avoided; instead state the probability objectively.

h) Do not cut off the questioning attorney; nor interject when both attorneys are discussing something, unless invited to do so.

i) Throughout all testimony, the document examiner "will understand the importance of correct and convincing testimony..., testimony of an illustrative, demonstrative character that does not present a bare opinion but gives the reasons and reasoning upon which an opinion is based."(21)

j) Freely use any exhibit needed to illustrate your testimony.

k) Remember the testimony is being recorded verbatim by a court reporter. Avoid grunts and other sounds in place of intelligible words. Use complete, proper sentences and forms of address. You do want your testimony to read lucidly.

3. After the deposition, you can instruct the witness about any unsuitable aspect of it.

D. DIRECT EXAMINATION OF YOUR EXPERT: QUALIFICATIONS(58)

1. Both attorney and expert must bear in mind the objectives of the testimony:

- a) to establish the expert's unimpeachable credentials;
- b) to show how much better qualified and believable your expert is as compared to the opposing expert.
- c) There are two ways the expert can give testimony: in reply to questions or in narrative form. Due to the burdensome schedule in most courts, the Court might welcome a request for narrative testimony in interests of saving time. Such narrative testimony can be used to best effect by a good expert witness.

2. To qualify the witness, the pertinent points to bring out might be:

- a) residence and office location;
- b) occupation;
- c) length of time in the profession;
- d) special skill and knowledge in specific aspects of the problem before the Court;
- e) experience as a witness;
- f) the study of document examination and of handwriting identification in particular;
- g) the expert's teachers and further studies or researches on the subject;

- h) knowledge of associated sciences and industries as relevant to the present problem;
- i) the tools, instruments, professional library, etc. the expert has;
- j) professional works published;
- k) membership in professional organizations;
- l) methods employed in making investigations such as this one and the time usually needed.

E. DIRECT EXAMINATION OF YOUR EXPERT: THE EXPERT OPINION(66)

1. The objectives to be accomplished are:

- a) establish a prima facie case by setting forth the expert's convincing evidence;(18)
- b) have technicalities explained in clear layman's terms and the complexities made simple;
- c) counter the testimony of opposing expert with facts from yours;
- d) show how the facts were discovered;
- e) demonstrate those facts and interpret them properly;
- f) note why evidence apparently supporting the opposing view is not cogent.

2. The line of questioning would include the following points.(31) You might wish to reorder them to suit your style. Again you might ask for narrative testimony.

- a) Ask background information as to when, how and by whom retained and exact nature of the commission.
- b) The witness should identify all the samples of writing and other documents worked on and the report submitted.
- c) Set forth the procedures and methods used in the investigation. The kind of instruments that were needed and time consumed will show how serious, thorough and

careful the work was and also head off any suggestions of unfair tests by cross-examiner.

d) Have the witness describe the observations made and the important data obtained. Illustrative material should be prepared for use during this heart of the demonstrative evidence.

e) The witness is asked to state the conclusion drawn, this being the expert opinion about the genuineness or falsity of the document. The reply should be precise and to the point, for example: "The signature on Defendant's Exhibit 1, purporting to be that of the plaintiff, is not by her hand."

f) The expert should explain how the conclusion was drawn from the data. This includes both the scientific principles applied and the reasoning process used. Without this element of testimony, the opinion is merely an opinion and not an expert opinion.

g) In explaining the scientific principles applied, technicalities are inevitable. Have the witness explain all of them clearly and precisely. There is not much point in having come to all this time and trouble to bring the truth to the Court's attention if it is not communicated.

h) Ask about those things which seem to support the opposite opinion. Have the witness explain why they are not valid proofs.

3. You will want to enhance the demonstrative testimony:

a) Be careful that the judge and each juror can see and understand the exhibits and illustrative material used. Some writers suggest using hand-held exhibits rather than single large ones.(28)

b) The testimony must be as interesting and lively as possible without being beyond bounds of decorum.(39, 46)

F. CROSS-EXAMINATION BY OPPOSING COUNSEL

1. As mentioned in other regards, during cross-examination and your re-direct the usual principles and practices apply.

2. In the pre-trial conference instruct the witness as to the conduct you want. The following suggestions are set forth for the sake of documentary expert witnesses who read this:

a) The document examiner ought "be a gentleman first, last and all the time." (26) Though that should be revised to read: "Be a lady or gentleman...."

b) The witness should explain when a question cannot be answered and why.

c) The witness ought not enter into debate with counsel, but remain the objective expert and make every question an opportunity to tell judge and jury the facts. To allow oneself to be baited is to lose sight of the objective of expert testimony.

d) The expert must insist firmly on the right to explain the why of answers given and positions taken. The why of it is the essence of the expert opinion testimony; to allow opposing counsel to strip away the reasons and reasoning of your expert's answers is to gut the very testimony itself. (72)

e) The witness can control the pace of cross-examination by the same thoughtful pause before each answer as used during direct examination, along with the same measured pace of presentation. Since the mind usually goes into neutral when the mouth is in high gear, the cross-examiner will try to rush the pace of question and answer.

f) When the question refers to any document or written matter, the witness should ask that the document be produced and page and line citation given before replying.

g) If the expert tires after a prolonged time on the stand, that should be brought to the attention of the Court. If a break is not permitted, at least it becomes a matter of record.

h) The instructions for being deposed have application to Court testimony.

2. You will want to object to any test the cross-examiner proposes to determine the witness' skill or

knowledge. Assume the proposed test is unfair and make counsel prove otherwise. "A lawyer calling an expert witness certainly wants to guard against unfair tests and against any compulsion upon the witness to solve a test problem without adequate study. Certain aspects of the defense against cross-examination tests must be undertaken during the expert's direct testimony." (60)

G. CROSS-EXAMINATION OF OPPOSING EXPERT: QUALIFICATIONS

Each numbered paragraph gives an objective of cross-examination and sometimes the portions of this guidebook which can help in achieving that objective.

1. To disqualify the witness: see Section IV, Parts B and C.
2. Failing disqualification, to discredit the witness: ethical standards may be a vulnerable point; see Section IV, Part D.
3. To limit testimony to as narrow a subject area as possible: some relevant skill or knowledge is limited or missing, or the expert does not have the equipment to do some tests and observations. This is where possession of the witness' writings, reports and curriculum vitae may show such lack.
4. To lay foundations for attacks during cross-examination on the expert opinion: your consulting expert could do the technical research ahead of time by studying the report and deposition and arming you with authoritative references.
5. To bring out any bias or prejudice: as with any other expert, this is done by identifying relationship with opposing counsel or parties, types of cases taken, doing nothing else for a living, having financial interest in the outcome, and so forth.
6. To show where qualifications are less than your expert's relative to the problem investigated: bring up pertinent points from Part D above.
7. To show the witness overstated qualifications on direct: this requires homework ahead of time.

H. CROSS-EXAMINATION OF OPPOSING EXPERT: THE ISSUES (64, 68)

1. The five areas of the expert's investigation are given. They should be related to the points given in Part E, Number 2 above.

a) The facts: in document examination and handwriting authentication this is always something observable in the questioned document and exemplars. If it is inaccurate or incomplete, the opinion can be impeached. The witness has to be able to point it out so others can see it if it is valid. If you can point out an observable, relevant fact to the witness which he missed, he must either concede having missed it or deny the obvious. The lists of clues to suspicious documents and writings and the eight categories of writing features will help you find these. Best of all, your own expert can find them and give them to you.

b) The principles of interpretation: these are the scientific rules and corollaries applied to the facts. Some have been given in Section II, Part B, Numbers 1 and 2. But the witness must state the exact ones he used and be made to explain each technical term. You might want to nail him down more and require an explanation of why the principles are valid and which authorities back up their formulation and use. (27)

c) The reasoning process by which the expert chose those particular principles to apply to these particular facts and the logical steps which lead to the opinion: the old adage about the weakest link applies to the chain of reasoning.

d) The formal statement of the opinion: this is first the report written up, then the deposition and finally the direct testimony. Any incongruities, deletions or additions from one to the next may show weak points. Other writings, reports or testimony of the witness which is inconsistent with this as well as the other four areas could serve to impeach testimony. All this entails proper preparation, using your expert to assist if necessary.

2. Cross-examining in one of the five areas in Number 1 above can achieve one or more of the objectives below: (71)

- a) to show the inaccuracy of the testimony;
- b) to obtain admissions supporting your case or undercutting the opponent's;(65)
- c) to show what seems to prove the opponent's case is either insignificant or inconclusive;
- d) impeach the methodology used;
- e) to impeach the witness' scientific knowledge as demonstrated in direct testimony.(71)

3. If you intend using hypothetical questions, it would be advisable to check them with your expert to avoid embarrassment by asking an invalid or even a somewhat silly question.

VIII. A WORD TO THE LAY PERSON

If you feel you have been harmed by a forgery, seek legal assistance immediately. If you go directly to a document examiner or handwriting expert, you might unknowingly sabotage your own position. This is not to impugn the reliability of the expert or your sense of responsibility. But without knowing the law there is a chance of inadvertently laying a foundation for future attacks on your position. Also, the longer you wait to engage an attorney's services, the more time will be lost in pursuing your interests properly and effectively. Indeed, delay might possibly cause loss of some right or advantage.

I in no way mean to say you ought not to inform yourself as well as you can. Your County Law Library is available to you just for that purpose. A millionaire could not create a private resource matching the informational wealth you enjoy as a member of a free society. Use your public libraries--support them--share knowledge of them with others. A well informed public is the first line of defense against crimes like forgery.

Doing these things, you will be an intelligent, informed client whom your attorney can serve even better. We all have our own area of expertise, which is why we can serve each other and the economy works. Attorneys and document examiners have to listen to you when it comes to your particular expertise!

IX. CONCLUDING REMARKS

"The crude forgery gets by simply because the vast majority of documents, being genuine, are given but the most cursory inspection...."(13)

X. ANNOTATED BIBLIOGRAPHY

The bibliography focuses on handwriting and expert testimony. The expert can suggest material on other aspects of document examination. I omitted the usual books, since they are mostly technical and I wanted to concentrate on short writings which are geared to the non-expert. There are a few books which have been alluded to in the text or are of particular interest.

A. PERIODICAL LITERATURE

I have arranged the entries alphabetically by periodical title, since that is the way you will have to locate them in a library. Only articles I have located and read are included. THE JOURNAL OF FORENSIC SCIENCES had many citations which I could not find at the libraries I used. Particularly volume two of that journal had extensive articles on document examination. THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY AND POLICE SCIENCE had many articles on various aspects of document examination.

1. ADVOCATES QUARTERLY. 2:449-59, 1981. Document examination: finding fraud in handwriting. Mary J. Duncan. (Glossary of terms. "...graphology is a projective technique of personality assessment.... [T]he training received in such study in analyzing the minute elements of writing, even to the smallest dot with the meticulous observation required for doing so, is invaluable [for document examination].... A forger notices the larger elements of writing, but it is the training in recognizing the minute elements which enables the document examiner to find the fraud in handwriting.")

2. AMERICAN BAR ASSOCIATION JOURNAL. 20:249-50, April, 1934. The examination of anonymous letters - importance of scientific analysis as aid to identification. Albert S. Osborn. (Has checklist for evaluating content, literary style and purpose of letter for clues. Unillustrated.)

3. IBID. 21:151-3, March, 1935. Cooperation of attorney and expert witness. Albert S. Osborn. (Mostly motivational.)

4. IBID. 40:690-1, August, 1954. Code of ethics adopted by questioned document examiners. Ordway Hilton and Clark Sellers. (The code I give is a bit more stringent.)

Some of the rules in this code are general enough to mean either everything or nothing. I imagine the temptation is to apply the first to others and the second to oneself.)

5. AMERICAN BAR ASSOCIATION JOURNAL. 45:931-4, Sept., 1959. Mental disorders: their effect upon handwriting. Hanna F. Sulner. (She lists indications in handwriting for various mental disturbances. Unillustrated.)

6. IBID. 71: 50-3, Sept., 1985. Protecting your expert during discovery. J. E. Daniels. (Covers: initial written interrogation, further written discovery, deposition, fees and expenses, and FEDERAL RULES OF EVIDENCE.)

7. CASE AND COMMENT. 44:18-19, Jan., 1939. "Found" documents. Albert S. Osborn. (He describes how similar such cases most often are.)

8. CRIMINAL LAW QUARTERLY. 1:219-23, August, 1958. Some elementary points in document examination. Royston J. Packard. (Overview of handwriting identification and the basic procedure. Unillustrated.)

9. IBID. 24:497-511, Sept., 1982. Legal and evidentiary aspects of document examination. Mary I. Duncan and Margaret A. Schreider. (The legal focus is Canadian law, but the comprehensive discussion of all aspects of the subject is of unusual value. Three page glossary. Unillustrated.)

10. CRIMINAL LAW REVIEW. 1954:341-53, May, 1954. Aspects of forensic science: anonymous letters. Wilson R. Harrison. (A practical and comprehensive discussion. Unillustrated.)

11. IBID. 1954:511-7, July, 1954. Aspects of forensic science: handwriting. Wilson R. Harrison. (Some elementary explanations. Well done. Unillustrated.)

12. IBID. 1962:750-69, Nov., 1962. The disguised hand. Wilson R. Harrison. (An excellent presentation illustrated by actual cases.)

13. IBID. 1963:21-36, Jan., 1963. Forgery detection for the layman; Part I. Wilson R. Harrison. (First of a series of four articles which are worth reading if you want to pursue the subject at length. Illustrated.)

14. EXPERT AND THE LAW. 6:10-2, March-April, 1986. Writing an effective opinion letter. M. Patricia Fisher. (Good advice applicable to any informational writing.)
15. GEORGE WASHINGTON LAW REVIEW. 48:774-90, August, 1980. Expert testimony based on novel scientific techniques: admissibility under the FEDERAL RULES OF EVIDENCE. (Covers qualifications, usefulness, scientific acceptance and probative value outweighing prejudicial effect. Bulk of text is case citations in footnotes.)
16. GEORGIA LAW REVIEW. 19:71-120, Fall, 1984. Compelling the expert witness: fairness and utility under the FEDERAL RULES OF CIVIL PROCEDURE. V. A. Maurer. (Discusses all aspects of subject, including compelling expert not retained by either party to suit, the "pure" expert, to testify. Case decisions examined.)
17. ILLINOIS LAW REVIEW. 34: 433-43, Dec., 1939. Lay witness identification of handwriting; an experiment. Fred E. Inbau. (A controlled study of ability of college professors to identify their own and colleagues' signatures. The same samples were used to test ability of secretaries to the professors, lay persons and bank employees. Table of statistics given.)
18. JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY AND POLICE SCIENCE. 21:330-8, 1930. Handwriting, typewriting and document expert testimony tested by its convincingness. Elbridge W. Stein. (He gives case citations with quotes.)
19. IBID. 30:243-9, July-August, 1939. Form blindness and proof; sight defects in relation to the administration of justice. Albert S. Osborn. (He gives two tests for it.)
20. IBID. 31:103-10, May-June, 1940. The care and preservation of documents in criminal investigation. Ordway Hilton. (He explains seven basic rules. The advice applies equally to civil cases.)
21. IBID. 31:236-45, July-August, 1940. The investigation and trial of a questioned document case. Albert S. Osborn. (Originally a penmanship teacher who was asked to testify as a handwriting expert, he was considered by many as the dean of document experts in his lifetime. Some say he founded the profession, though eminent European graphologists had previously done the empirical research underlying handwriting identification. This is one of his

more practical articles, though he does lack precision of expression. Unillustrated.)

22. JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE. 32:241-56, July-August, 1941. The collection of writing standards in criminal investigation. Ordway Hilton. (Comprehensive, precise and practical. Illustrated, plus tables giving step by step procedure. Applicable to civil cases.)

23. IBID. 32:675-8, March-April, 1942. Beginning of a disputed document case. Albert S. Osborn. ("The first and most important question about a surprising document is whether or not it is genuine. All subsequent action in the matter, of course, depends upon this fact...." Unillustrated. No citations.)

24. IBID. 34:50-60, May-June, 1943. The identification of one's own handwriting. Steuart Britt and Ivan N. Mensh. (College students were tested. Errors average about 12% in identifying one's alphabetic writing and about 38% for numerals.)

25. IBID. 40:105-8, May-June, 1949. Obtaining document standards for comparison. Stanley S. Smith. (Supplements information given in item 22.)

26. IBID. 40:654-6, Jan.-Feb., 1950. Cross-examination from the viewpoint of a technical witness. Clark Sellers. (A document examiner, he emphasizes proper comportment.)

27. IBID. 41:192-8, 1950. Cross-examining the expert witness with the aid of books. Sherwin Willens. (He mostly discusses case law as of that date, but he gives suggested lines of questioning.)

28. IBID. 42:826-32, March-April, 1952. The use of individual photographic charts in presenting questioned document testimony. George G. Swett. (A technique developed after years of experience. Suggests hand-held exhibits, one each for judge, witness, each counsel and each pair of jurors.)

29. IBID. 43:547-55, 1952. Can the forger be identified from his handwriting? Ordway Hilton. (Explains when possible and when not and the pitfalls to avoid. Three illustrations.)

30. JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE. 43:685-9, Jan.-Feb., 1953. Disguised handwriting. John J. Harris. (Each year he tested new students to see how they would do it. Change of slant was first choice, followed by use of different pen and change of shape of letters.)

31. IBID. 44:522-4, Nov.-Dec., 1953. Elements of effective expert testimony. Donald Doud. (Succinct.)

32. IBID. 48:647-51, March-April, 1958. How much do people write alike; a study of signatures. John J. Harris. (Illustrated.)

33. IBID. 50:585-90, March-April, 1960. Forgery above a genuine signature. David A. Black. (Shows some common ways it is done and how to watch for it. Illustrated.)

34. IBID. 56:372-4, Sept., 1965. Effects of intoxication on handwriting. K. S. Puri. ("Many times in Indian courts...it is claimed that a particular document was not signed by the alleged person or if the signature was obtained, the person has no knowledge of it because of intoxication." Well, any defense in a pinch! One illustration.)

35. IBID. 56:382, Sept. 1965. Further look at handwriting standards. Ordway Hilton. (Continuation of his discussion in item 22.)

36. IBID. 56:528-39, Dec. 1965. Behavior factors in handwriting identification. A. Naftali. (Touches on factors influencing both writer and expert. Illustrated.)

37. JOURNAL OF FORENSIC SCIENCES. 1:35-42, July, 1956. Education and qualifications of examiners of questioned documents. Ordway Hilton. (Good basic education, preferably university level with application to field preferred. Apprenticeship if one can find very good practitioner who is also a good teacher. Practical bottom line: self-educated and continually so.)

38. IBID. 12:102-11, Jan., 1967. Perception and Handwriting identification. Rafael Fernandez Ruenes. (Discusses skill in perception of form and its development. Illustrations of optical illusions and of tests for powers of observation.)

39. JOURNAL OF FORENSIC SCIENCES. 13:509-18, Oct., 1968. Modern educational aids for simplified explanations of handwriting comparisons. Mary S. Beacon. (How to answer attorney's questions and present lively court evidence.)

40. IBID. 14:463-8, Oct., 1969. Forgeries over genuine signatures. Linton Godown. (He begins: "The unwary are prone to assume that any suspect document displaying an undeniably genuine signature is necessarily a genuine document." He ends: "A well-rounded document examiner recognizes that it is as essential to confirm authenticity as to attack fraud and forgery.")

41. IBID. 15:476-88, Oct., 1970. Disguised handwriting; a statistical survey of how handwriting is most frequently disguised. Edwin F. Allord, Jr. (Gives statistical results.)

42. IBID. 21:201-7, Jan., 1976. Some aspects of normal behavior: their use in understanding problems encountered by document examiners. J. F. McCarthy. (First part, behavior and act of writing, gives guidance in obtaining requested exemplars. Other two parts consider document examiner's experience and the testimony.)

43. IBID. 23:149-54, Jan., 1978. The question of disguise in handwriting. F. E. Webb. ((Discusses problem of compelled exemplars being in a disguised style.)

44. IBID. 24:890-7, Oct., 1979. History of questioned document examination in the United States. Ordway Hilton.

45. LAW SOCIETY GAZETTE. 67:322-4, 471-2, 637-8; 68:339-40, May, June, Sept., 1970; July, 1971. Handwriting analysis: psychological and forensic. John Gay. (Four parts cover layout and spacing, slant, size and zone proportions. Simple, illustrated introduction.)

46. LITIGATION. 7:18-20, Spring, 1981. Documents: keeping judge and jury awake. Janeen Kerper. (Distinguishes mere documents from potential exhibits, which "provide essential support to a jury instruction" or are of "sufficient collateral importance.")

47. IBID. 8:8-9+, Winter, 1982. Experts: a few fundamentals. Peter I. Ostroff. (General remarks.)

48. LITIGATION. 8:13-16, Winter, 1982. Discovery of experts. Morgan Chu. ("...by withholding from your experts all otherwise privileged material and by avoiding unnecessary written communications from and to an expert, you can sidestep many of the serious pitfalls.")

49. IBID. 10:36-8+, Summer, 1984. How to control documents. B. Nicastro. (System of code numbers for classifying, indexing and accessing.)

50. MEDICINE, SCIENCE AND THE LAW. 3:107-17, April, 1963. Articles for the non-specialist: Some basic rules for the identification of handwriting. Ordway Hilton. (Unillustrated, theoretical explanation of five rules and their corollaries. Non-technical.)

51. IBID. 6:75-86, April, 1966. The distinction between "Graphology" and "Questioned document examiner." P. G. Baxter. (The bibliography lists good authors from both fields.)

52. NEBRASKA LAW REVIEW. 37:552-80, May, 1958. Effective utilization of a questioned document examiner. Winsor C. Moore. (A complete coverage with extensive citations to cases and authorities.)

53. PRACTICAL LAWYER. 6:39-56, Jan., 1960. Suspicious documents. Winsor C. Moore. (Extensive point-by-point checklists, including 60 sources of signatures as standards. Illustrated.)

54. IBID. 29:27-33, March, 1983. When and how to use an examiner of disputed documents. Vickie L. Willard. ("...in selecting an expert, choose not only a competent examiner but also a skilled witness.")

55. IBID. 31:21-30, July, 1985. A practical guide to using expert testimony under the FEDERAL RULES OF EVIDENCE. Monroe L. Inker. (With many case citations.)

56. IBID. 33:19-24, Sept., 1987. The pretrial use of experts. Dennis R. Suplee, Margaret S. Woodruff. (First in a series of articles. Practical, thorough treatment. Gives pros and cons of alternatives.)

57. IBID. 33:69-78, Oct., 1987. Deposing experts. Dennis R. Suplee, Margaret S. Woodruff. (Second in the series. Bibliography.)

58. PRACTICAL LAWYER. 33:53-60. Direct examination of experts. Dennis R. Suplee, Margaret S. Woodruff. (Third in the series.)

59. IBID. 34:41-54, Feb., 1988. Cross-examination of expert witnesses. Dennis R. Suplee, Margaret S. Woodruff. (The fourth and last in the series.)

60. RUTGER'S LAW REVIEW. 13:306-13, Winter, 1958. Cross-examination of a handwriting expert by test problem. Ordway Hilton. (Concise description of what makes a fair test and how to defend your expert against unfair tests. With case citations.)

61. TRIAL. 16:37-9, August, 1980. Complex litigation: effective use of the technical expert. Milton Meckler. (Basic practical advice.)

62. IBID. 20:44-8, Jan., 1984. The expert witness in depositions. (Areas of discovery, fact preparation, eliminating surprises, testimony techniques, conduct and additional matters are covered.)

63. IBID. 20:58-62+, July, 1984. Non-testifying experts. Monty L. Preiser, Gregory B. Chiartas. ("This article reviews the current state of the law with regard to whether plaintiff's lawyers can be compelled to answer those questions [re names and addresses of such experts] and what arguments they can use when attempting to protect such information.")

64. IBID. 20:74-8, April, 1984. Taking on the opposing expert: an approach to cross-examination. David B. Baum. (Discusses low, medium and high risk questions.)

65. IBID. 21:64-8, Sept., 1985. Opponent's expert can work for you; two strategies for winning by using the rules of evidence. James Hely. (With case references and illustrative questions.)

66. TRIAL LAWYER'S GUIDE. 1:39-54, Feb., 1957. Demonstrative evidence and handwriting testimony. Vernon Faxon. (Thoroughly explores nature of expert's opinion evidence. Case citations and other references given for each point. Pages 49-54 have transcript of actual direct examination for qualifying witness.)

67. TRAIL LAWYER'S GUIDE. 1:71-88, May, 1957. Getting signed documents into evidence. Irving Goldstein. (Six methods are described, the sixth being use of handwriting expert to prove authenticity of deceased person's signature. Sample direct examination on pages 84-86.)

68. TRIAL LAWYERS' QUARTERLY. 18:41-8, Summer-Fall, 1987. Cross-examination of an expert. Lanny S. Vines. (Practical guide, point-by-point. Repeatedly advises: Be prepared! But then be flexible and responsive to events.)

69. TULARE LAW REVIEW. 24:204-10, Dec., 1949. Science and the scientific examination of signatures. Ordway Hilton. (Discusses principles making it a true science.)

70. IBID. 27:473-8, June, 1953. Pre-trial preparation and pre-trial conferences in a questioned document case. Ordway Hilton. ("The miscarriage of justice actually often stems from failure of the expert and the trial attorney to present the case properly and effectively.")

71. WASHBURN LAW JOURNAL. 1:533-50, Spring, 1962. Cross-examining the incompetent document examiner. Winsor C. Moore. (Footnote references to cases with quotes. Very thorough.)

72. WASHINGTON AND LEE LAW REVIEW. 23:12-22, Spring, 1966. Opinion evidence or facts. Lucile P. Lacy. (Illustrated. Sections are: Handwriting, Typewriting, The document itself speaks, A checklist for attorneys.)

B. BOOKS

73. CALIFORNIA EXPERT WITNESS GUIDE. Raoul D. Kennedy. California Continuing Education Of The Bar, Berkeley, CA, 1983. Cumulative Supplement, December, 1987. (Ought to be in one's personal library. Combines legal discussion, procedure and practical advice.)

74. ESSENTIALS OF HANDWRITING ANALYSIS. Marcel B. Matley. Handwriting Services of California, San Francisco, 1986. (Text designed for the beginning student; gives precise rules of observations and systematic procedures.)

75. EXPERIMENTS WITH HANDWRITING. Robert Saudek. Reprinted by Books For Professionals, Sacramento, CA. (The author conducted and recorded extensive and carefully

controlled experiments. For a while he worked in the United States.)

76. GRAPHOTHERAPEUTICS: PEN AND PENCIL THERAPY. Paul de Ste. Colombe. De Vorss And Co., Marina Del Rey, CA, 1966. (Mistitled really, for it gives his synthesis of the European traditions of scientific handwriting analysis. The first part talks about the titled subject but does not really treat it. He was involved in early writing research at the Sorbonne.)

77. HEALTH CLUES IN HANDWRITING. Rose Lajoie Toomey. Bay Port Press, National City, CA, 1983. (25 clues are explained and illustrated. Based on extensive research with cooperation of physicians.)

78. INTERNATIONAL DIRECTORY OF HANDWRITING ANALYSTS. Compiled by Marjorie Westergaard, 31246 Wagner St., Warren, MI 48093. (Includes: Graphology, a historical perspective; an extensive bibliography; accredited schools; proprietary schools; and professional organizations.)

79. FORGERY DETECTION, A PRACTICAL GUIDE. Wilson R. Harrison. Frederick A. Praeger, New York, 1964. (A little book intended for the non-specialist. You could read it in a weekend easily and obtain an overall view of the full scope of document examination.)

80. FORENSIC REGISTER OF EXPERT CONSULTANTS, 1988-89. Bar Association of San Francisco, San Francisco, 1988. (This is a nicely done publication. Your area may have a similar guide. If not, your local association might undertake production of one.)

C. ADDITIONAL PERIODICAL ARTICLES

81. DUKE LAW JOURNAL. 1978:1375-99, June, 1978. The power of language; presentational style in the courtroom. John M. Conley and William M. O'Barr. (Excellent presentation of research in the subject with its practical applications.)

82. IBID. 1987:140-56, Feb., 1987. Discovery and testimony of unretained experts: creating a clear and equitable standard to govern compliance with subpoenas. Mark Labaton. (Reviews current state of affairs with conflicting court rulings. Subpoenaing party should show: 1)substantial

need; 2) inability to obtain information otherwise without undue hardship; and 3) equitable compensation for expert.)

83. FAMILY ADVOCATE. 6:8-10+, Summer, 1983. Preserving your witness's stellar testimony: how to qualify your expert to the court. Albert Momjian. (Consider such things as witness' appearance and credibility as well as expertise. The entire issue treats the broader topics, such as lively testimony, hostile witness, depositions. With bibliography.)

84. JOURNAL OF FORENSIC SCIENCES. 25:132-40, Jan., 1980. Trends in the field of questioned document examination. Nanette G. Galbraith. (Survey of current practices, etc.)

85. IBID. 29:966-86, Oct., 1984. Ethical and moral dilemmas confronting forensic scientists. Oliver C. Schroeder. (General discussion.)

86. IBID. 34:366-70, March, 1989. The status and training for questioned document examiners in the United States. James E. Behrendt. (Problem is tendency of profession to be "in-grown". The "big three" associations are elitists but not up to scope of today's challenges. Solution proposed to problem identified? Interestingly he suggests even more exclusivity!)

87. JOURNAL OF POLICE SCIENCE AND ADMINISTRATION. 5:43-7, 1977. The meaning of handwriting opinions. Thomas V. McAlexander. (Discusses such aspects as probability statements.)

88. IBID. 6:419-23, 1978. Intentional disguise in court-ordered handwriting specimens. E. F. Alford, Jr. and Ronald M. Dick. (How to head off such and to overcome problems. I suggest having your expert testify specifically on nature of disguise used.)

89. IBID. 8:378+, 1980. Hearsay evidence in expert opinion. Ronald M. Dick. (Opposing attorney might attempt to suggest expertise damaging to his case is merely hearsay or equivalent. Be sure your expert gives soundly reasoned opinions.)

90. IBID. 9:160-6, June, 1981. The forensic scientist in the judicial system. Joseph P. Bono. (Addresses the problem of an objective scientist adapting as expert in an adversarial system.)

91. JOURNAL OF PSYCHIATRY AND LAW. 10:173-204, Summer, 1982. Elements of persuasion in expert testimony. Steven C. Bank and Norman G. Poythress, Jr. (A very instructive article. Discusses credibility both as a quality and an impression, the logical vs emotional appeal in structure and organization of testimony and factors relating to jury reaction.)

92. LOS ANGELES DAILY JOURNAL. 100:5, col. 1, May 11, 1987. Real estate title forgeries seen increasing. Richard C. Reuben. (Some warning signs include bargain basement prices, absence of new financing in the latest transfer of owners, trusts deeds paid off years before maturity without sale or refinancing, complex chain of title and no legal representation for seller or mortgagor. Residential property is prime target.)

93. MEDICAL TRIAL TECHNIQUE QUARTERLY. 27:476-88, Spring, 1981. Alteration, falsification and fabrication of records in medical malpractice actions. Samford M. Gage. (Surveys several cases, California court decisions and statutes and offers possible solutions to problems.)

94. NATIONAL LAW JOURNAL. How to cope with an expert witness' unfounded opinion. Mark A. Dombroff. 7:15, col. 1, June 3, 1985. (Problem: expert witness may give no basis for opinion. Cross-examiner may walk into a trap by asking; so use discovery. Discusses uses and limits of hypotheticals.)

95. IBID. 8:15, col. 4, Oct. 14, 1985. Study of handwriting as evidence; is it genuine? Evanne Geltzeiler. (Handwriting identification and handwriting evidence.)

96. IBID. 10:13, col. 3, April 18, 1988. Experts need to put their house in order. Marcia Chambers. (The bottom line is the need for an ethic to tell the truth, rather than merely tell what serves interests of retaining party.)

97. NEW YORK LAW JOURNAL. 200:1, col. 3, July 20, 1988. Two charged in Brooklyn real-estate scheme: titles to 38 vacant properties forged; sold by brother, sister to unsuspecting victims (New York). Nancy Zeldis. (Illustrates fact one may not really know there are forgeries in the deal.)

98. PITTSBURGH. UNIVERSITY. LAW REVIEW. 39:511-35, 1978. Contingent fees for expert witnesses? Frederick N. Egler, Jr. (Surveys history and theory behind prohibition.)

99. POLICE. 3:70-4, Nov.-Dec., 1958. Modern handwriting analysis (graphology); status, usefulness and potential. J. L. St. John. (Considers also the cautions.)

100. SOLICITORS JOURNAL. 132:214-17, Feb. 19, 1988. Graphology: its uses for lawyers. (Great Britain) Barbara Mitchels and Syle Provot. (Considers both forensic and character analysis.)

101. STUDENT LAWYER. 14:44-45, Sept., 1985. Expert witnesses: if a little knowledge is a dangerous thing, just think what a lot of knowledge must be. Ed Zotti. (A delightful, humorous essay which gives food for thought.)

102. TRIAL. 23:44-48, August, 1987. Document examiners; finding the right expert can strengthen your case. (Like other articles in this periodical, it is pithy and practical.)

103. IBID. 23:75-8, Oct., 1987. Cross-examining the expert; some tips from the bench. Hugh C. Humphreys. (The do's and dont's. A good "refresher course". Most important point: Listen!)

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XI. ILLUSTRATIONS

In order to have the proper illustrations specific to the needs of this text, I enlisted the assistance of the students of my classes in handwriting analysis.

I designed texts which they were to "forge" in various ways, each class given a particular type of forgery to attempt. The texts were made to parallel actual, common types of forgery. My own handwriting served as the authentic style to be forged.

The project also served as a kind of handwriting research to validate the principles and clues discussed in this guidebook. To be honest, I did not expect such direct validation and illustration, particularly since the "forgers" were knowledgeable about handwriting analysis.

A. DISGUISED HANDWRITING

The following text was read two times to a class. The first time to let them become familiar with it. The second time to be written in their natural style. From that text they devised a disguised version.

"Dear Neighbor,

"Your barking dog is bothering everybody. Silence him or I will!

"A Friend"

1. The top illustration is genuine style; the second, disguised. The disguised writing lacks flow. Note stops at end of words, such as "dog", "bothering" and "or". The ending is blunt or hooks back. The excessive pressure of abrupt endings shows the pen stopped short before being lifted. Also, the slant changes all of a sudden in "everybody" between "y" and "b". The capital "I" is left virtually undisguised.

Dear neighbor
Your barking dog is bothering
everybody, - silence him, or I
will.
A friend

Dear Neighbor:
Your barking dog is
bothering everybody, -
silence him, or I will
A Friend

2. The first writing is natural and the second is disguised. There is mechanical use of printed letters. Some letters are notably larger than others as in "everybody", where the "body" letters are fuller than the "every" letters. Where the genuine writing uses print-like letters, as "w" in "will", there is an exact match with the disguised. Slant is the same, even in lower zone loops which have the "g" descend rightward and "y" drop vertically.

Dear neighbor,
Your barking dog is bothering everybody.
Silence him or I will!
A friend.

Dear neighbor,
Your barking dog is
bothering everybody.
Silence him or I will!
A friend.

3. The top is genuine and the bottom disguised. Small "h" in "neighbor" is based on stick pattern, while others are looped. The awkwardness in several upper loops shows that such loops are not customary with the writer. Compare the easy flow of curves and loops in the genuine with the uneven ones in the disguised. "Body" of "everybody" is a good example. Capital "I" is rewritten to make a change in form.

Dear Neighbor. your barking
dog is bothering everybody.
Silence him or I will.

A. friend.

Dear Neighbor. your barking
dog is bothering everybody.
Silence him or I will.

A friend.

4. The slant in the disguised writing tries to be backhand. By the end of each line it almost back to natural. After she wrote this, she told the gentleman who wrote Number 3 that they both had better not go into forgery. They would be caught for sure.

Dear Neighbor,

Your barking dog is bothering everybody. Silence him or I will!

A Friend

Dear Neighbor,

Your barking dog is bothering everybody. Silence him or I will!

A Friend

5. This is the genuine style and the next page has the disguise. The small "r's" follow two patterns in the disguised, a gross form with excessive movement and the genuine small "r". Though size is made much larger, letter proportions remain fairly constant. Look at "h" in "both". Note how the proportion of height of loop to height of hump, the v between the loop's down stroke and up stroke of the hump and the distance of hump beyond the loop all remain very much like the genuine "h". She actually reverted to writing forms she has replaced over the past three or four years. Thus older samples of her writing would help identify her.

Dear Neighbor,
Your barking
dog is bothering
everybody. Silence
him or I'll.
a friend

Dear Neighbor,
Your barking
dog is both -
crying every -
body. Silence
him or I'll.

A Friend

B. IMITATED OR SIMULATED FORGERY

I wrote the following spurious note and asked a class to write it first in their own natural style and then in imitation of mine.

"My wife and mother never really understood me, so I leave it all to my beloved mistress, Jane Doe.

"John Q. Public"

My wife and mother never
really understood me. So I
leave all to my beloved
mistress, Jane Doe.

John Q. Public

My wife and mother
never really understood
me, so I leave all
To my beloved mistress,
Jane Doe.

John Q Public

1. On the previous page is the genuine style. On this and the next page are his two imitations. Note the small "d's". We call these Greek d's. In my writing I use them, but he makes his taller with finals trailing off, compared to my shorter and less fluent ones. Also, my small "v" in "never" has the final stroke rise with a rather stiff and firm motion. Since that gesture is not natural to him, in his imitations he instead makes the "v" as he does the Greek d. In many letters he does well, because we have similar letter forms. Note the tremor in "beloved", caused by slow effort at imitation with a tight grip.

My wife and mother
never ~~truly~~ really understood
me. So I leave all to
my beloved mistress,
Jane Doe.

John Q. Public

My wife and mother never
really understood me. So I
leave all To my beloved
mistress, Jane Doe.

John Q. Public

2. On the next page the first sample is natural and the second imitated. The imitation has more unvarying pressure than the natural style. The effort also results in a dropping base line. Unlike the first imitation above, the Greek d is awkward, because she does not use that form and has to work at it. Also, compare the tapering ends of many of my strokes with some of her blunt imitations, as in "me". The "o" of "Doe" is retouched to improve its form.

My wife and mother never
really understood me so

I leave all to my beloved
mistress Jane Doe.

John Q Public

My wife and mother never
really understood me. So I

leave all to my beloved
mistress, Jane Doe.

John Q. Public

3. The first sample is the natural and the second the imitation. The imitation is awkward in curved strokes, as in "mistress". Also "mistress" illustrates in the two "s's" a restrained movement. Both her natural writing and mine have the "s's" move freely to the right. Some end strokes are blunt, as in both letters of "my". The very uneven base line is due to each word being given deliberate attention at its start. Normally we write entire phrases and sentences rather than individual words and letters.

My wife and mother never really
understood me. So I leave all
to my beloved mistress, Jane Doe.

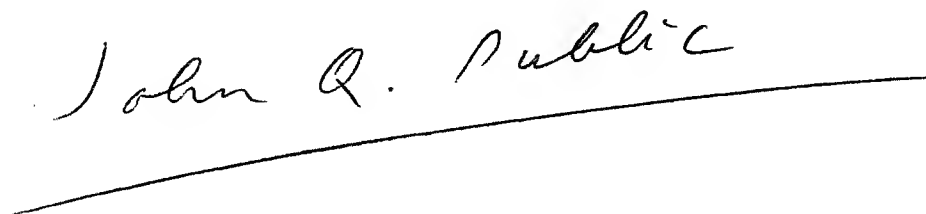
John Q. Public

My wife and mother never
really understood me. So I
leave all To my beloved
mistress, Jane Doe.

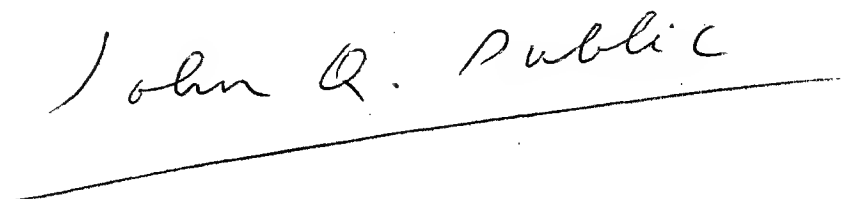
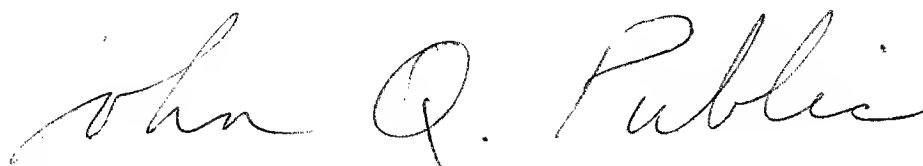
John Q. Public

C. TRACED FORGERY

The first illustration is a spurious signature by myself. Then follows samples from students, one in each set being in the student's natural style and the others being traced forgeries. One student got creative and made it into a substantial IOU.



1. In this tracing, as in the next two, the name matches the model well for size and overall features. With the original in your possession, you could easily recognize the relationship. Without it, the clues would alert you. He does very well with "John". The "Q" is flat on the initial down stroke. Also, the top of small "b" is flattened, while the up stroke of the loop of "l" has an involuntary movement resulting from excessively slow and careful motion. My "Public" was written in one motion. The trained eye could tell he wrote "P", "ubli", the i-dot and final "c" as four separate motions. He lost the fine detail of my trailing i-dot.



2. In this series the last sample is the person's natural style. Note how she makes the appendage of "Q" a vertical stroke. She tries to get my angle to it, but each time tends to the vertical. The period after "Q" and the i-dot are left out except for very light ones in the first tracing. The first one is likely too light due to poor ink flow. Can you tell where the tracing paused even though the pen was not lifted?

John Q. Public

John Q. Public

John Q. Public

John Q. Public

John Q. Public

John Q. Public

3. This writer tried tracing by impression, but he could not get satisfactory results. Note that the "IOU" tries to imitate the parts of the model that are usable, but it ends up as disguised writing. The curves of "D" and small "r" in "Dollars" follow the curve of "P" in his natural sample. The "IOU" is not spatially related to the traced signature as a genuine one most likely would be. Tremor appears in several traced strokes, as the tail of the first "Q". Also, you might be able to see ink smudges by the second capital "P" due to resting the pen before tracing.

I Owe John Crockett
1 Million Dollars.

John Q. Public

John Q. Public

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If I cannot assist you for any reason, I will endeavor to assist you in finding a reliable expert.